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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A17-1214**

Barry McReynolds,  
Appellant,

vs.

West St. Paul Police Department,  
Respondent.

**Filed May 21, 2018  
Affirmed  
Florey, Judge**

Dakota County District Court  
File No. 19WS-CV-17-571

Barry McReynolds, St. Paul, Minnesota (pro se appellant)

Bridget McCauley Nason, Tonetta T. Dove, LeVander, Gillen & Miller, P.A., South  
St. Paul, Minnesota (for respondent)

Considered and decided by Florey, Presiding Judge; Larkin, Judge; and Bratvold,  
Judge.

**UNPUBLISHED OPINION**

**FLOREY**, Judge

Appellant challenges the denial of his petition under Minn. Stat. § 626.04 (2016) for  
the return of property seized following his arrest. He asserts that the property was obtained  
via an unlawful search and seizure. We affirm.

## **FACTS**

On April 29, 2017, law enforcement received a report of an alleged sexual assault, and appellant Barry McReynolds was identified as a suspect. Subsequently, appellant was arrested, and his cellphone was seized. After the arrest, police obtained a search warrant and collected appellant's DNA via buccal swab. Police later obtained a search warrant to search the cellphone.

Appellant petitioned the district court for the return of his cellphone and DNA pursuant to Minn. Stat. § 626.04, which provides a statutory means for obtaining the return of seized property. On May 19, 2017, the parties appeared for a hearing on appellant's petition. Respondent West St. Paul Police Department called a designee of the custodian of appellant's property and requested an ex parte hearing to inform the district court of the status of the investigations related to appellant's property. An ex parte hearing was held.

The district court received testimony and information indicating that appellant is a suspect in a sexual-assault case and a second unrelated case. Search warrants were obtained to take appellant's DNA and search his cellphone for evidence related to those cases. The DNA sample was sent to the Bureau of Criminal Apprehension, along with a sexual-assault-examination kit, which had been completed on the alleged victim. Data was extracted from the cellphone. Charges had not yet been filed. Copies of the search warrants were received by the district court and placed under seal.

On May 24, 2017, the district court denied appellant's petition. The court found that the property was being held in good faith as potential evidence. The court further ordered that appellant pay \$322 in costs. This appeal followed.

## DECISION

Minnesota Statutes section 626.04(a) states that any property seized with or without a warrant “shall be safely kept by direction of the court as long as necessary for the purpose of being produced as evidence on any trial,” but “[i]f the owner of the property makes a written request to the seizing officer’s agency for return of the property, and the property has not been returned within 48 hours of the request,” excluding weekends and certain holidays, “the person whose property has been seized may file a petition for the return of the property.”

At an informal hearing, the district court must “allow if requested, or on its own motion may require, the custodian or the custodian’s designee to summarize the status and progress of an ongoing investigation that led to the seizure,” and “[a]ny such summary shall be done ex parte and only the custodian, the custodian’s designee, and their attorneys may be present with the court and court staff.” Minn. Stat. § 626.04(a). After the hearing, the district court shall not order the return of the property if “(1) the property is being held in good faith as potential evidence in any matter, charged or uncharged; (2) the property may be subject to forfeiture proceedings; (3) the property is contraband or may contain contraband; or (4) the property is subject to other lawful retention.” *Id.*

We generally review a district court’s findings of fact for clear error and conclusions of law de novo. *See Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013). Statutory interpretation is a question of law that is reviewed de novo. *Homart Dev. Co. v. County of Hennepin*, 538 N.W.2d 907, 911 (Minn. 1995). Here, the district court

found that the property was being held in good faith as potential evidence. The record supports the district court's finding.

Appellant asserts that officers did not have probable cause to seize his cellphone or search his vehicle. The district court did not address the lawfulness of the search and seizure of appellant's property. We conclude that the district court properly disregarded appellant's argument.<sup>1</sup>

Section 626.04 primarily concerns whether property is being legitimately retained; it does not expressly permit a challenge to the constitutionality of a search and seizure. "A statute does not give rise to a civil cause of action unless the language of the statute is explicit or it can be determined by clear implication." *Becker v. Mayo Found.*, 737 N.W.2d 200, 207 (Minn. 2007); *see also Bruegger v. Faribault Cty. Sheriff's Dep't*, 497 N.W.2d 260, 262 (Minn.1993) (concluding that principles of judicial restraint preclude judicial creation of additional causes of action outside those evident in a statute's express or implied terms). Another statute, Minn. Stat. § 626.21 (2016), permits a person harmed by an unlawful search and seizure to move for a return of the property based on the unconstitutionality of the underlying search and seizure. Because Minn. Stat. § 626.04 does not permit a challenge to the constitutionality of a search and seizure, the district court did not err by disregarding that issue.<sup>2</sup>

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<sup>1</sup> Appellant brought this action using a form petition, which specifically listed section 626.04 as the basis for the action. *See* Minn. Stat. § 626.04 ("The court administrator shall provide a form for use as a petition under this section."). The form gave no notice of a constitutional claim.

<sup>2</sup> As for the district court's award of costs, Minnesota Statutes section 626.04(b) states that if a petition seeking the return of seized property is denied, the district court "may award

Moreover, for purposes of this appeal, the record surrounding appellant's arrest and the search of his vehicle is too limited for any meaningful review. "When an appellant acts as attorney pro se, appellate courts are disposed to disregard defects in the brief, but that does not relieve appellants of the necessity of providing an adequate record and preserving it in a way that will permit review." *Thorp Loan & Thrift Co. v. Morse*, 451 N.W.2d 361, 363 (Minn. App. 1990), *review denied* (Minn. Apr. 13, 1990). For this additional reason, we affirm the district court's decision.

Lastly, appellant argues that his property should be returned because he has never been charged with a crime. Section 626.04(a)(1) permits the retention of potential evidence held in good faith, regardless of whether criminal charges have been filed. We therefore conclude that appellant's argument is unavailing.

**Affirmed.**

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reasonable costs and attorney fees." See Minn. R. Civ. P. 54.04(a) ("Costs and disbursements shall be allowed as provided by law."). We generally review a district court's decision to award costs for an abuse of discretion. *Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 155 (Minn. 2014). The record indicates that respondent expended \$322 in filing fees for the filing of a certificate of representation. The award of \$322 in costs was both permitted and reasonable.